

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Requests for Waiver by)	
)	
Eastern Lebanon County School District)	File Nos. SLD-220549, 220586
Myerstown, Pennsylvania)	
)	
Newport News Public Schools)	File No. SLD-231477
Newport News, Virginia)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Changes to the Board of Directors of the)	CC Docket No. 97-21
National Exchange Carrier Association, Inc.)	

ORDER

Adopted: March 21, 2003

Released: March 24, 2003

By the Wireline Competition Bureau:

1. Before the Wireline Competition Bureau are Waiver Requests filed by Eastern Lebanon County School District (Eastern Lebanon), Myerstown, Pennsylvania, and Newport News Public Schools (Newport), Newport News, Virginia (collectively, Applicants).¹ The Applicants request a waiver of the filing deadline of October 28, 2001 for filing FCC Forms 486 in Funding Year 2001 of the schools and libraries universal service support mechanism.² For the reasons set forth below, the Waiver Requests are granted, and the applications are remanded to SLD for further action consistent with this Order.

¹ Letter from Gwen Boltz, Eastern Lebanon County School District, to Federal Communications Commission, filed February 20, 2002 (Eastern Lebanon Waiver Request); Electronic mail from Laurretta Carter, Newport News Public Schools, to Federal Communications Commission, filed January 28, 2002 (Newport News Waiver Request) (collectively, Waiver Requests).

² See Waiver Request. In prior years, Funding Year 2001 was referred to as Funding Year 4. Funding periods are now described by the year in which the funding period starts. Thus the funding period that began on July 1, 2001 and ended on June 30, 2002, is now called Funding Year 2001. The funding period that began on July 1, 2002 and ends on June 30, 2003 is now known as Funding Year 2002, and so on.

I. BACKGROUND

2. The Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) administers the schools and libraries support mechanism under the direction of the Commission.³ After an applicant for discounted services under the schools and libraries support mechanism has entered into agreements for eligible services with one or more service providers, it must file with SLD an FCC Form 471 application.⁴ The FCC Form 471 notifies SLD of the services that have been ordered and supplies an estimate of funds needed to cover the discounts to be given for eligible services.⁵ SLD then issues a funding commitment decision letter indicating the discounts, if any, to which the applicant is entitled. After the funding year begins and the discounted service commences, the approved recipient of discounted services submits to SLD an FCC Form 486, which indicates that the service has begun and specifies the service start date.⁶ After receiving the FCC Form 486, SLD will accept invoices from the service provider and issue disbursements to the provider in cumulative amounts up to the amount of the discount awarded.⁷ Under the “120 day rule,” an applicant must submit its FCC Form 486 for a service no later than 120 days after the commencement of the service or the issuance of SLD’s funding decision, whichever is later.⁸ If an applicant files its FCC Form 486 after this 120 day period, the date 120 days before the filing of the FCC Form 486 becomes the service start date for funding purposes.⁹

3. With the passage of the Children’s Internet Protection Act (CIPA), Congress amended section 254 of the Act, imposing new conditions on schools that “hav[e] computers with Internet access” and request discounted services under the schools and libraries universal service support mechanism.¹⁰ Under section 254(h)(5), no school, except for schools that seek

³ *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, CC Docket Nos. 97-21 and 96-45, Third Report and Order in CC Docket No. 97-21 and Fourth Order on Reconsideration in CC Docket No. 97-21 and Eighth Order on Reconsideration in CC Docket No. 96-45, 13 FCC Rcd 25058 (1998).

⁴ See Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (October 2000) (FCC Form 471).

⁵ 47 C.F.R. § 54.504(c).

⁶ Schools and Libraries Universal Service, Receipt of Service Confirmation Form, OMB 3060-0853 (July 2001) (FCC Form 486); Instructions for Completing the Schools and Libraries Universal Service, Receipt of Service Confirmation Form (FCC Form 486), OMB 3060-0853 (July 2001) (Form 486 Instructions). In addition, an early filing option exists for Funding Year 2001 applicants whose services begin on or before October 28, 2001 and for applicants in subsequent funding years whose services begin on or before July 1 of the funding year. See FCC Form 486.

⁷ See FCC Form 486; Form 486 Instructions.

⁸ See Form 486 Instructions at 8-12.

⁹ *Id.*

¹⁰ 47 U.S.C. § 254(h)(5). Section 254(h)(6) applies the same requirements to libraries. However, this latter section was recently found to be unconstitutional. See *American Library Association, Inc. v. United States*, Nos. CIV.A. 01-1303, CIV.A. 01-1322, 2002 WL 1126046 (E.D. Penn. May 31, 2002), *probable jurisdiction noted*, ___ S. Ct. ___,

only discounts on telecommunications services, may receive universal service discounts unless the authority with responsibility for administration of the school makes certain certifications, and ensures the use of computers with Internet access in accordance with the certifications.¹¹

4. Congress established the conditions on the use of computers with Internet access in two separate acts, CIPA, which added section 254(h)(5) (establishing certification requirements for schools) and (h)(6) (establishing similar requirements for libraries), and the Neighborhood Children's Internet Protection Act (NCIPA), which added section 254(l) (establishing additional requirements for both schools and libraries).¹² Under section 254(h)(5), which governs schools, applicants are required to certify that they are enforcing a policy of Internet safety as defined in NCIPA, and that their policy of Internet safety also includes the use of a "technology protection measure," colloquially referred to as a software filter, that is in accordance with requirements specified in the CIPA provisions.¹³ Under NCIPA, codified at 254(l), schools are required to adopt and implement an Internet safety policy that addresses (1) access by minors to inappropriate material on the Internet, (2) the safety and security of minors when using electronic communications, (3) unauthorized access, (4) unauthorized disclosure, use, and dissemination of personal identification information regarding minors; and (5) measures designed to restrict minors' access to material harmful to minors.¹⁴

5. To implement these new provisions, the Commission issued the *CIPA Order*, which, *inter alia*, added new certifications for CIPA and NCIPA to the FCC Form 486 beginning in Funding Year 2001.¹⁵ In cases of consortium applicants, the Commission put the certifications on a new FCC Form 479, which must be completed by each of the consortium members and then collected and retained by the consortium leader.¹⁶ The Commission also amended its rules, adding the CIPA requirements at section 54.520.¹⁷

2002 WL 31060372 (2002). Pursuant to this decision, the Commission has, *inter alia*, directed that Funding Year 2001 library applicants not be penalized for failure to meet CIPA's October 28, 2001 certification deadline. See *Federal-State Joint Board on Universal Service, Children's Internet Protection Act*, CC Docket No. 96-45, Order, FCC 02-196 (rel. June 28, 2002) (*CIPA II Order*). However, neither the court's decision nor the Commission's order in any way affected the CIPA obligations of school applicants. See *CIPA II Order*, para. 19.

¹¹ 47 U.S.C. §§ 254(h)(5)(A), (h)(5)(A)(ii). Hereinafter we will refer collectively to all of the persons specified in the statute as responsible for making these certifications on behalf of participating schools and libraries as "entities."

¹² See Neighborhood Children's Internet Protection Act (NCIPA), Pub. L. 106-554 §§ 1731 *et seq.*

¹³ 47 U.S.C. §§ 254(h)(5), 254(h)(6). These software filters are designed to block access to Internet sites containing sexually explicit or otherwise objectionable material. See *American Library Association, Inc. v. United States*, Nos. CIV.A. 01-1303, CIV.A. 01-1322, 2002 WL 1126046, *23-26 (E.D. Penn. May 31, 2002).

¹⁴ See NCIPA, Pub. L. 106-554 § 1732, codified at 47 U.S.C. § 254(l).

¹⁵ See *Federal-State Joint Board on Universal Service, Children's Internet Protection Act*, CC Docket No. 96-45, Report and Order, 16 FCC Rcd 8182 (2001) (*CIPA Order*); 47 C.F.R. § 54.520.

¹⁶ *CIPA Order*, 16 FCC Rcd at 8194, para. 25.

¹⁷ 47 C.F.R. § 54.520.

6. In accordance with CIPA's requirement that applicants in Funding Year 2001 make their certifications within 120 days of the start of the funding year, the Commission added an additional deadline to the normal 120 day rule for FCC Forms 486. Under CIPA, Funding Year 2001 applicants were required to file their FCC Forms 486 by no later than October 28, 2001 unless their service began after that date or a funding commitment decision letter was issued after that date.¹⁸ A Funding Year 2001 applicant with a funding commitment decision letter who failed to meet the October 28, 2001 deadline could obtain discounts only for services received on or after the date that its FCC Form 486 was postmarked.¹⁹

7. Eastern Lebanon submitted two applications for discounts in Funding Year 2001, both seeking discounts only on telecommunications services beginning on July 1, 2001.²⁰ Eastern Lebanon was approved for funding on July 23, 2001.²¹ It then timely submitted an FCC Form 486 in August of 2001.²² On October 22, 2001, SLD rejected the FCC Form 486 because the certifications in Block 4, Items 11(a)-11(e), which relate to the CIPA requirements, were all blank.²³ SLD stated that Billed Entities must check at least one of these certifications in Funding Years 2001 and thereafter.²⁴

8. Newport News similarly filed an application in Funding Year 2001 seeking telecommunications services discounts only, and was granted funding.²⁵ It submitted an FCC Form 486 in August of 2001, but this form was rejected by SLD on October 22, 2001, because, like Eastern Lebanon, Newport News had failed to make the requisite CIPA-related certification.²⁶

¹⁸ 47 U.S.C. §§ 254(h)(5)(E), 254(h)(6)(E); *CIPA Order*, 16 FCC Rcd at 8188-89, 8191, paras. 10, 18.

¹⁹ See Form 486 Instructions at 9.

²⁰ FCC Form 471, Eastern Lebanon County School District, App. No. 220549, filed December 13, 2000; FCC Form 471, Eastern Lebanon County School District, App. No. 220586, filed December 13, 2000.

²¹ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Gwen Boltz, Eastern Lebanon County School District, dated July 23, 2001 (App. No. 220549 FCDL); Letter from Schools and Libraries Division, Universal Service Administrative Company, to Gwen Boltz, Eastern Lebanon County School District, dated July 23, 2001 (App. No. 220586 FCDL).

²² See FCC Form 486, Eastern Lebanon County School District, filed August 3, 2001.

²³ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Gwen Boltz, Eastern Lebanon County School District, dated October 22, 2001 (App. No. 220549); Letter from Schools and Libraries Division, Universal Service Administrative Company, to Gwen Boltz, Eastern Lebanon County School District, dated October 22, 2001 (App. No. 220586).

²⁴ *Id.*

²⁵ See Letter from Schools and Libraries Division, Universal Service Administrative Company, to Gaddis Kay, Newport News Public Schools, dated August 7, 2001.

²⁶ FCC Form 486, Newport News Public Schools, filed August 31, 2001; Letter from Schools and Libraries Division, Universal Service Administrative Company, to Laurretta Carter, Newport New Public Schools, dated October 22, 2001.

9. By the time each of the Applicants filed a corrected version of their FCC Forms 486, the October 28, 2001 deadline had passed.²⁷ As a result, under the CIPA-implementation rules discussed above, the Applicants lost funding for discounts on services received before the dates on which their corrected FCC Forms 486 were filed.²⁸ The Applicants now seek a waiver of the CIPA October 28, 2001 deadline so that they may receive discounts on services going back to July 1, 2001.²⁹

II. DISCUSSION

10. As an initial matter, we must address whether we have authority to grant a waiver in these cases. For applicants receiving discounts on Internet access or internal connections services, the October 28, 2001 deadline for certifications is a statutory requirement imposed by CIPA, and therefore cannot be waived.³⁰ However, because the Applicants here requested only telecommunications services, the October 28, 2001 deadline for the filing of their certifications is a regulatory rather than a statutory requirement.³¹ The Commission has authority to waive any provision of its rules for good cause shown.³² Therefore, we find that we have authority to grant a waiver, and proceed to consider whether a waiver is appropriate.

11. A rule may be waived where the particular facts make strict compliance inconsistent with the public interest.³³ In addition, the Commission may take into account considerations of hardship, equity, or effective implementation of overall policy on an individual basis.³⁴ In sum, waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.³⁵

²⁷ See FCC Form 486, Eastern Lebanon County School District, filed November 17, 2001; FCC Form 486, Newport News Public Schools, filed October 31, 2001.

²⁸ See *supra*, para. 6; see also, e.g., Letter from Schools and Libraries Division, Universal Service Administrative Company, to Laretta Carter, Newport News Public Schools, dated December 21, 2001 (resetting service start date to October 31, 2001 for payment purposes due to “YEAR 4 CIPA DEADLINE.”).

²⁹ See Eastern Lebanon Waiver Request; Newport News Waiver Request.

³⁰ *Request for Review St. Helen School, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File Nos. SLD-172423, 172425, CC Dockets No. 96-45 and 97-21, Order, DA 02-3163 (Com. Car. Bur. rel. November 18, 2002).

³¹ 47 C.F.R. § 54.520(g)(1).

³² 47 C.F.R. § 1.3; see also *WAIT Radio v. FCC*, 418 F.2d 1153, 1158 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972) (*WAIT Radio*).

³³ *Northeast Cellular*, 897 F.2d at 1166.

³⁴ *WAIT Radio*, 418 F.2d at 1157.

³⁵ *Northeast Cellular*, 897 F.2d at 1166.

12. We conclude that a waiver of the October 28, 2001 deadline is appropriate. We find that a number of circumstances, taken together, warrant a deviation from the enforcement of the October 28, 2001 deadline. First, we find it relevant that both Applicants made a good faith effort to comply with the deadline, by filing their original FCC Forms 486 early in the funding year and by filing their corrected versions shortly after being apprised of the rejection of the originals. In addition, we note that the CIPA certifications were imposed for the first time in Funding Year 2001. In the context of minimum processing standards rejections, we have found that one factor that weighs in favor of granting relief from such a rejection is that the minimum processing standard involved a first-time information request.³⁶ We similarly find that the first-time nature in Funding Year 2001 of the CIPA certifications, the only information on the FCC Form 486 that the Applicants omitted, weighs in favor of granting relief in these cases.

13. We find that these circumstances warrant a deviation from the general rule, and that such deviation would better serve the public interest than strict adherence to the general rule.³⁷ We therefore grant a waiver of the October 28, 2001 deadline to the Applicants, and remand to SLD for further processing of their corrected FCC Forms 486.³⁸

14. Accordingly, IT IS ORDERED, pursuant to sections 1-4, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 U.S.C. §§ 0.91, 0.291, 1.3, and 54.722(a) that the Waiver Request filed by Eastern Lebanon County School District, Myerstown, Pennsylvania, on February 20, 2002 IS GRANTED, and these applications are REMANDED to SLD for further action consistent with this Order.

³⁶ *Request for Review by Naperville Community Unit School District 203, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-203343, CC Dockets No. 96-45 and 97-21, Order, 16 FCC Rcd 5032 (2001)

³⁷ The Applicants suggest that such a waiver should be granted for future years as well. The Applicants should take note that, under the statute, the October 28, 2001 CIPA deadline is applicable only in Funding Year 2001. Thereafter, only the normal 120 day rule will be applied to FCC Forms 486 in years after Funding Year 2001. *See supra*, para. 6; *see also* 47 U.S.C. § 254(h)(5)(E)(i); 47 C.F.R. § 54.520(g).

³⁸ On remand, SLD should still, however, apply the normal 120 day rule where applicable. Petitioners rely on *Request for Review by Lettie W. Jensen Library, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-267950, CC Dockets No. 96-45 and 97-21, Order, 16 FCC Rcd 18526 (Com. Car. Bur. 2001)(*Lettie Jensen*) and *Request for Review by Council Bluffs Community Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-E007282, CC Dockets No. 96-45 and 97-21, Order, 15 FCC Rcd 18836 (Com. Car. Bur. 2000) (*Council Bluffs*) as the bases for their request for waiver. In those cases, we found grounds for waiver where SLD failed to timely process the applicants' FCC Form 470s. In the instant case, because we grant the Petitioners' request for waiver on different grounds, we need not reach the issue of whether *Lettie Jensen* and *Council Bluffs* are controlling precedent. We emphasize, however, that *Lettie Jensen* and *Council Bluffs* dealt with the FCC Form 470 which is different in purpose, form and scope from the FCC Form 486 at issue in this case.

15. IT IS FURTHER ORDERED that the Waiver Request filed by Newport News Public Schools, Newport News, Virginia, on January 28, 2002 IS GRANTED, and this application is REMANDED to SLD for further action consistent with this Order.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Matthey
Deputy Chief, Wireline Competition Bureau